

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**W.P.(Cr.) No. 376 of 2018**

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Yogendra Saw @ Yogendra Sao and Anr. .... Petitioners  
 -- Versus --  
 The State of Jharkhand and Others .... Respondents

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioners :- Mr. Binod Singh , Advocate  
 For the State :- Mr. Yogesh Modi, Advocate  
 For Election Commission of India:Dr. Ashok Kumar Singh, Advocate  
 For the C.B.I. :- Mr. Anil Kumar, A.S.G.I.

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**5/15.06.2023** Heard Mr. Binod Singh, the learned counsel appearing on behalf of the petitioners, Mr. Yogesh Modi, the learned counsel appearing for the respondent State, Dr. Ashok Kumar Singh, the learned counsel appearing for the respondent Election Commission of India and Mr. Anil Kumar, the learned A.S.G.I appearing on behalf of the C.B.I.

2. This petition has been filed for directing the respondents to transfer the investigation of the case being Jagarnathpur P.S.Case No.54 of 2018, corresponding to G.R. No.1866 of 2018 registered under section 171(b), (c), (e) and (f) of the I.P.C, pending in the court of Judicial Magistrate, 1<sup>st</sup> Class-IV, Ranchi to the C.B.I. The prayer is also made to add other sections of the I.P.C. and the case under the Prevention of Corruption Act.

3. Mr. Binod Singh, the learned counsel for the petitioners submits that the said case was registered by the police on the instruction of Election Commission of India against one Mr. Anurag Gupta who is the higher I.P.S Officer posted in State of Jharkhand who found indulged in

manipulating the Rajya Sabha Election of the year 2016 and a huge amount of transaction has taken place at his behest. He submits that for that a case has been registered, however, the case has not proceeded in its right direction and that is why the petitioners have approached this Court for direction upon the C.B.I to take over the case and investigate the same. He submits that the petitioners are not having faith on the State police in view of the fact that on repeated requests the said case has been reluctantly instituted by the State police against Anurag Gupta and Ajay Kumar. He submits that there are other highers involved with regard to the election and that is why this is a fit case to transfer the same to the C.B.I for fetching faith of the society on the investigating agency. He refers to the documents annexed with the writ petition and submits that there are sufficient materials and even the call details have been recorded by the petitioner no.1 that has been produced to the police and in that view of the matter the case may kindly be handed over to the C.B.I. He submits that there are decisions of Hon'ble Supreme Court and this High Court to hand over the case to the C.B.I where the higher officials of the State are involved in the crime. In this regard Mr. Binod Singh, the learned counsel appearing on behalf of the petitioners relied in the case of ***Subrata Chatteraj v. Union of India and Others, (2014) 8 SCC 786.***

4. On the other hand, Mr. Modi, the learned counsel appearing on behalf of the respondent State submits that the election took place in the year 2016 and about the present status of the investigation he is not knowing.

5. Mr. Ashok Kumar Singh, the learned counsel appearing for the Election Commission of India submits that when this matter has come in the knowledge of the Election Commission of India, the Election Commission of India rose to the occasion and wrote letter dated

13.6.2017 addressed to the Chief Secretary, Government of Jharkhand wherein direction was issued for proceeding departmentally against the accused persons for misuse of official position, interfering in election, breach of conduct, service rules, etc. A request was also made to register the case under the IPC sections as well as Prevention of Corruption Act. He submits that by the letter dated 9.3.2018, again the Election Commission of India requested the Chief Electoral Officer, Ranchi which was based on the earlier letter dated 13.6.2017 addressed to the Chief Secretary. He submits that in counter affidavit filed by the Election Commission of India in paragraph no.5 it has been disclosed that the Government of Jharkhand has informed the Election Commission that a case being Jagarnathpur P.S. Case No.154 of 2018 has been registered against Anurag Gupta, Ajay Kumar and others. The charge memo departmentally has also been issued against Anurag Gupta admittedly on 13.4.2018. He submits that in that background the Election Commission of India has taken action seriously and expects that the investigation will come to an end at the earliest. On instruction he submits that Election Commission of India is only interested for early conclusion of the investigation and there is no prayer on behalf of the Election Commission of India to hand it over to the C.B.I and it is upto the Court to take a decision on the prayer made by the learned counsel for the petitioners.

6. Mr. Anil Kumar, the learned A.S.G.I appearing on behalf of the C.B.I. fairly submits that the C.B.I has got no role at this stage to submit anything and it is up to the Court to take a decision on the prayer of the petitioners.

7. In view of the above submissions of the learned counsels appearing on behalf of the parties, the Court finds that pursuant to the direction by the Election Commission of India the State of Jharkhand has taken action and Jagarnathpur P.S. Case No.154 of 2018 has been

registered against Mr. Anurag Gupta, Ajay Kumar and others under sections 171-(B), (C), (E) and (F) of the I.P.C. The Election Commission of India has also been informed about the action taken by the State of Jharkhand which has been noted in the argument of the learned counsel appearing on behalf of the Election Commission of India. Thus, this is not a case that on the direction of the Election Commission of India, the case has not been registered. The investigation has already been taken up and enquiry has also been initiated against Anurag Gupta on the allegation that Anurag Gupta has tried to manipulate the Rajya Sabha Election in the year 2016 and pursuant to the direction of the Election Commission of India he has been prosecuted. To transfer the case to the C.B.I. that can happen only in extreme cases which would be rare and that power of the High Court is not exercisable in cases like the present where it may be debatable whether the direct accusation made in conjunction with the attendant circumstances, if proved to be true, is likely to result in conviction. A reference may be made to the case of ***Kartar Singh v. State of Punjab, (1994) 3 SCC 569***, wherein at paragraph no.357 of the said judgment, it has been held as under:

*“357. In a recent judgment, this Court in State of Maharashtra v. Abdul Hamid Haji Mohammed after examining a question regarding the justification of the High Court to exercise its jurisdiction under Article 226 for quashing the prosecution for an offence punishable under the TADA Act has observed thus:*

*“... It is no doubt true that in an extreme case if the only accusation against the respondent prosecuted in the Designated Court in accordance with the provisions of TADA Act is such that ex facie it cannot constitute an offence punishable under TADA Act, then the High Court may be justified in invoking the power under Article 226 of the Constitution on the ground that the detention of the accused is not under the provisions of TADA Act. We may hasten to add that this can happen only in extreme cases which would be rare and that power of the High Court is not exercisable in cases like the present where it may be debatable whether the direct accusation made in conjunction with the attendant circumstances, if proved to be true, is likely to result in*

*conviction for an offence under TADA Act. ... There was thus no justification for the High Court in the present case to exercise its jurisdiction under Article 226 of the Constitution for examining the merits of the controversy much less for quashing the prosecution of respondent Abdul Hamid in the Designated Court for offences punishable under TADA Act."*

*After observing thus, the Court finally concluded:*

*"The view taken by the High Court on this aspect is contrary to law apart from being unjustified and impermissible in exercise of its jurisdiction under Article 226 of the Constitution."*

8. In the case of ***Hari Singh v. State of Uttar Pradesh, (2006) 5 SCC 733*** the allegations were made that because of pressure of some influential people the police has not taken any positive steps and the said plea was not accepted by the Hon'ble Supreme Court noted in paragraph nos. 1 and 3 of the aforesaid case which are quoted as below:

*"This petition filed under Article 32 of the Constitution of India is for a direction to conduct enquiry by the Central Bureau of Investigation (in short "CBI") into the murder of one Yashvir Singh, son of the petitioner. The allegation is that though the first information report (in short "FIR") has been lodged with the police to the effect that the said Yashvir Singh has been murdered and has not committed suicide, because of the pressure of some influential people, the police has not taken any positive steps, and on the contrary the petitioner is being harassed and threatened by certain persons. As culled out from the petition, the said Yashvir Singh was posted as Additional Commissioner of Gorakhpur, Uttar Pradesh and was found dead in his official residence on 19-1-2006. The petitioner made a grievance that the police officials in collusion with some relatives—more particularly the in-laws of the deceased Yashvir Singh are projecting it as a case of suicide. It is stated that the petitioner has made several representations to various authorities, but without any avail. It is pointed out that the Superintendent of Police had directed the officer in charge of the police station concerned to enquire into the matter in view of the allegations made by the petitioner. But it is the grievance of the petitioner that no action has been taken purportedly on the basis of the pressure exercised by some influential people who were inimical to the deceased though they are related to him. In essence grievance is that no action is being taken on the first information report lodged by the petitioner.*

3. Section 156 deals with "Police officer's power to investigate cognizable cases" and the same reads as follows:

“156.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

To transfer the case to the C.B.I was again the subject matter in the case of ***Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762***, wherein at paragraph no.23, 43 and 44 of the said judgment are quoted under:

“23. However, in the case of a “fresh investigation”, “reinvestigation” or “de novo investigation” there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct “fresh investigation”. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of “fresh”/“de novo” investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a “fresh investigation”.

43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh”

*or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.*

*44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in Disha v. State of Gujarat, Vineet Narain v. Union of India, Union of India v. Sushil Kumar Modi and Rubabbuddin Sheikh v. State of Gujarat.”*

9. In the above judgment, the Hon’ble Supreme Court has clearly held that under the criminal jurisprudence the superior court has jurisdiction under section 482 Cr.PC or even under Article 226 of the Constitution of India to direct further investigation, fresh or de-novo and even re-investigation, however, it is also well settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection. Thus, the law is well settled with regard to transfer of the case to a particular agency by the superior courts and if the court is convinced that the matter is required to be transferred to another agency. In the case in hand, the F.I.R has already been registered. It has been reported to the Election Commission of India and the Election Commission of India is well aware of the registration of the case. Further Rajya Sabha Election took place in the year 2016 and the petitioners have filed this petition on 30.10.2018. On 31.10.2018, the petitioners took time and the matter was adjourned to 5.12.2018. On 25.2.2021 again the petitioners took adjournment. In this background it

further suggest that the petitioner who happened to be one of the M.L.A of another party they have only filed the petition for publicity as the case was listed earlier and the case was not argued even on the point of issuing notice upon the private respondents by the petitioners on the last occasion.

10. In the case relied by Mr. Binod Singh, the learned counsel appearing on behalf of the petitioners, there were financial scam nick named chit-fund scam that had hit the State of West Bengal, Tripura, Assam and Orissa involves collection of nearly Rs.10,000 crores approx. of the general public especially of the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam. On that background the Hon'ble Supreme Court has been pleased to refer the matter to the C.B.I and the facts of the present case is otherwise and that case is not helping the petitioners. Further the parameters for referring the matter to the C.B.I by the High Court has been discussed hereinabove elaborately. The case is not coming within the aforesaid parameters to handover the case to the C.B.I.

11. The extraordinary power of the constitutional Courts in directing CBI to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the Investigating Agency or in the National Interest and for doing complete justice in the matter. Only in exceptional case where the investigation does not inspires the confidence of the court then only the extraordinary power of the High Court referring the matter to the CBI can be invoked-In the absence of prima facie material to come to the conclusion that there was unfair investigation, High Court cannot exercise its writ Jurisdiction to order for CBI investigation. There must be some material on record to show that the Investigating Officer has committed



an error in conducting the investigation and shabby investigation is conducted. In the present case, the Court not finds any material to grant such extraordinary relief referring the matter to the CBI.

12. In view of the above, the Court is not inclined to transfer the case to the C.B.I.

13. Accordingly, this petition [W.P.(Cr.) No.376 of 2018] is dismissed. However, the Court expects that the investigating agency will take hectic steps in its right direction to conclude the investigation at the earliest and the Court can only say at this juncture that if the charge sheet is filed in the crime register pursuant to the FIR lodged against the accused persons shall be considered by the concerned court on its own merit and in accordance with law.

14. Pending petition, if any, also stands dismissed accordingly.

**( Sanjay Kumar Dwivedi, J.)**

**A.F.R.**

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